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8
9 **UNITED STATES DISTRICT COURT FOR**
10 **THE NORTHERN DISTRICT OF CALIFORNIA**

11
12 ROHNERT PARK CITIZENS TO
13 ENFORCE CEQA, and DOES 1 through 5,
14 inclusive,

15 v. Plaintiff,

CASE NUMBER C 007-4607 TEH

16 **JOINT CASE MANAGEMENT**
17 **STATEMENT**

18 CALIFORNIA DEPARTMENT OF
19 TRANSPORTATION, UNITED STATES
20 DEPARTMENT OF TRANSPORTATION,
21 FEDERAL HIGHWAY ADMINISTRATION,
22 and DOES 6 through 10, inclusive,

Date: March 31, 2008
Time: 1:30 p.m.
Ctrm: 12, 19th Fl, SF

23 Defendants.

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1 Plaintiff Rohnert Park Citizens to Enforce CEQA, Defendant California
2 Department of Transportation (the State) and Defendants United States
3 Department of Transportation and Federal Highway Administration (Federal
4 Defendants) submit this further joint Case Management Statement pursuant to the
5 Court's Case Management Order and Order Referring Case to Mediation entered
6 December 18, 2007.

7 **1. Jurisdiction and Service:** Plaintiff contends that this Court has
8 jurisdiction pursuant to 28 U.S.C. § 1331 and 1361. This Court has pendent
9 jurisdiction over the state California Environmental Quality Act (CEQA) and Public
10 Records Act (PRA) claims joined with the federal NEPA claim. Venue is
11 appropriate in the Northern District of California under 28 U.S.C. § 1331(e).
12

13 Federal Defendants state that this Court has jurisdiction pursuant to 28
14 U.S.C. § 1331, but does not agree that it has jurisdiction under 28 U.S.C. § 1361.
15 Further, the Office of the U.S. Attorney, Northern District of California and Federal
16 Defendants have been served with process. Federal Defendants take no position
17 on the issue of this Court's jurisdiction over the California Department of
18 Transportation.
19

20 Plaintiff obtained and filed an executed waiver of service from the State.
21 The State states that it accepted a waiver of service but has not appeared in this
22 action.
23

24 The State also does not waive any immunities or defenses for lack of
25 jurisdiction by participation in this joint statement. The due date for the State's
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1 response to the complaint was January 13, 2008 but was extended based upon its
2 intent to file a Rule 12 Motion to Dismiss. Based upon the Court's case
3 management order, the parties agreed that the initial mediation would be
4 completed prior to the filing of the motion to dismiss. The State contends that
5 Plaintiff is barred from suit against the State in federal court under the 11th
6 Amendment, and intends to file its motion to dismiss soon. The State does not
7 agree with Plaintiff that the court has jurisdiction under any of the State causes of
8 action for CEQA or Public Records Act. The State takes no position on the
9 jurisdiction of the NEPA claim.

10 **2. Facts:** Federal Defendants and the State proposed building the Wilfred
11 Avenue Interchange Project in Rohnert Park, Sonoma County, California (the
12 Project). The Project proposes to modify the interchange to connect Wilfred
13 Avenue to Golf Course Drive by an under-crossing and to widen and realign U.S.
14 Route 101 for HOV lanes from Rohnert Park Expressway Overcrossing to the
15 Santa Rosa Avenue Over-crossing.

16 Federal Defendants and the State prepared and released a joint Negative
17 Declaration/Initial Study (CEQA) and Environmental Assessment/Finding of No
18 Significant Impact (EA/FONSI), pursuant to the National Environmental Policy Act
19 (NEPA).

20 Plaintiff contends that the environmental documents do not discuss the
21 environmental impacts of a casino proposed in the vicinity of the Project. Plaintiff
22 further contends that the State failed to produce all non-privileged documents in
23

1 response to plaintiff's California Public Records Act (PRA) request.

2 **3. Legal Issues:**

3 Plaintiff contends that the legal issues are (1) whether an Environmental
4 Impact Statement ("EIS") is required for the Project pursuant to NEPA, (2) whether
5 recirculation of the negative declaration is required pursuant to section 15088.5 of
6 the CEQA Guidelines (14 Cal. Code Regs.); and/or (3) whether subsequent or
7 supplemental environmental review is required pursuant to section 15162 or
8 section 15163 of the Guidelines; and (4) whether Caltrans violated the PRA by law
9 by improperly and without justification withholding certain non-exempt and non-
10 privileged public records from plaintiff and plaintiff's members and representatives.

11 Federal Defendants contend that the legal issue is whether the preparation
12 of an Environmental Impact Statement ("EIS") is required for the Project, pursuant
13 to the National Environmental Policy Act ("NEPA").

14 **4. Motions:** Plaintiff does not anticipate making any motions.

15 Federal Defendants state that the parties should stipulate to a proposed
16 schedule for briefing and hearing of cross-motions for summary judgment and ask
17 the Court to enter an order adopting that schedule.

18 The State intends to file a Rule 12 Motion to Dismiss for lack of jurisdiction
19 as soon as possible with a hearing date set for May 2008.

20 **5. Amendment of Pleadings:** Plaintiff does not anticipate amending the
21 complaint.

22 /

1 **6. Evidence Preservation:** Plaintiff contends that this is a mandamus case
2 tried on the administrative record. Plaintiff elected to prepare the record under
3 CEQA relative to the state law claim and can begin to do so with the documents
4 received pursuant to its PRA request. Such record preparation should be
5 coordinated with Federal Defendants so that duplication does not occur.

7 Federal Defendants states that all known documents related to the
8 administrative record have been preserved and will be made available when the
9 administrative record is prepared and produced.

11 **7. Disclosures:** This is an action for review of an administrative record and
12 exempt from the rule for initial disclosures, pursuant to Rule 26(a)(1)(E),
13 Fed.R.Civ.P.

15 **8. Discovery:** Discovery is neither necessary nor appropriate in this action
16 for review of an administrative record.

17 **9. Class Actions:** This case is not a class action.

19 **10. Related Cases:** None.

20 **11. Relief:** Plaintiff requests (1) a Peremptory Writ of Mandate ordering
21 defendants to set aside their respective actions and any approvals in furtherance
22 of the project and to comply with NEPA, the APA, CEQA, the PRA, and other
23 applicable laws prior to further consideration the project; (2) declaratory relief; (3)
25 upon necessity and the filing of a request, that Court issue a temporary stay of
26 the administrative approvals and/or a temporary restraining order and

1 preliminary injunction; (4) a permanent injunction enjoining defendants from
2 engaging in any activity connected with the approvals or the project unless and
3 until this Court finds that the approvals are in full compliance with NEPA, the APA,
4 CEQA, the PRA, and all other applicable laws; and (5) costs of suit and attorney's
5 fees herein pursuant to section 1021.5 of the California Code of Civil Procedure
6 and/or the Equal Access to Justice Act, 28 U.S.C. §§ 2412(b), (d), and/or section
7 6259(d) of the California Government Code or pursuant to any other applicable
8 law.
9

10 Federal Defendants request a judgment of dismissal and an award of costs.

11 **12. Settlement and ADR:** The parties participated in mediation on March
12
13 11, 2008, but were unable to reach a settlement. On March 18, 2008, the
14 assigned mediator certified that the parties held a mediation session on March 11,
15 2008 and noted his intention to conduct a follow-up phone discussion on April 15,
16 2008.
17

18 The State believes that further mediation would be productive, and the
19 mediator is scheduled to conduct further discussions with the parties by April 15.
20

21 **13. Consent to Magistrate Judge For All Purposes:** Plaintiff consents to
22 have a magistrate judge conduct all further proceedings including trial and entry of
23 judgment.
24

25 The United States respectfully declines to consent to magistrate judge for
26 further proceedings. The State respectfully declines to consent to a magistrate
27 judge for further proceedings.
28

1 **14. Other References:** This case is not suitable for reference to binding
2 arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.
3

4 **15. Narrowing of Issues:** The issues are not amenable to being narrowed
5 by agreement or by motion. The evidence will be presented in the form of the
6 administrative record contained in volumes, indexed, and paginated.

7 **16. Expedited Schedule:** Plaintiff contends that this case can be handled
8 on an expedited basis with streamlined procedures. Plaintiff proposes the
9 following schedule:

10 3/31 Federal record complete
11 4/18 proposed index of Caltrans record submitted to Caltrans
12 4/25 copy of proposed record documents to Caltrans
13 4/30 Caltrans' certification and lodgment of record
14 *Plaintiff suggests that the Federal and State record be combined into one record for
reduction of repetitiveness and ease of use.*
15 5/21 opening brief
16 6/11 opposition briefs
17 7/2 reply briefs

18 Plaintiff's proposed schedule anticipates four briefs: one opening brief, two (or one
19 combined) defendants' opposition brief[s]; and one reply brief responding to the
20 two or one combined defendants' opposition brief[s]. Plaintiff does not anticipate
21 the filing of simultaneous briefs, but a process similar to law and motion.

22 Federal Defendants suggest that the parties enter into a stipulation and ask
23 the Court to sign an order which sets a schedule for briefing and hearing of cross-
24 motions for summary judgment, as follows:

25 - Date for Plaintiff's motion for summary judgment
26
27 - Date for Federal Defendants' memorandum in opposition to Plaintiff's

1 motion for summary judgment and Federal Defendant's motion for summary
2 judgment.

3 - Date for Plaintiff's reply memorandum in support of its summary
4 judgement motion and memorandum in opposition to Federal Defendants'
5 motion for summary judgment.

6 - Date for Federal Defendants' reply memorandum in support of its motion.

7 - Date for Court's hearing on cross-motions for summary judgment.

8 Federal Defendants recommend the foregoing briefing plan, under an

9 agreed-upon schedule, because it serves to identify and reduce the true points of
10 contention and promotes judicial economy by:

11 1) Reducing the number of total briefs from six (6) to four (4) , i.e., two per
12 side; and

14 2) Allowing each party to respond to the arguments made by the adversary,
15 thereby refining and sharpening the issues the Court truly needs to resolve.

17 This type of briefing schedule renders the briefs more helpful to the Court than
18 one where the parties file simultaneous briefs, where the parties are completely
19 unaware of the points being argued by their adversary, and therefore, do not
20 address those points.

22 **17. Scheduling:** See item 16. Federal Defendants state that its proposed
23 schedule for briefing cross motions for summary judgment should not commence
24 until after its Administrative Record and the Administrative Record under CEQA
25 have been prepared and made available to all parties. Federal Defendants
26 estimate that the administrative record for the Environmental Assessment will be
27

1 complete not later than March 31, 2008.

2 **18. Trial:** Trial is inappropriate and unnecessary in this record review case.

3 The case should be handled on the briefs or motions for summary judgment

4 based upon an agreed-upon schedule by the parties and the Court.

5 Plaintiff states that the hearing before the Court, whether on briefs or summary
6 judgment, is expected to last 2 hours or less.

7 **19. Disclosure of Non-party Interested Entities or Persons:** The parties

8 have not filed the "Certification of Interested Entities or Persons." Plaintiff here

9 certifies that it knows of no persons, firms, partnerships, corporations (including

10 parent corporations) or other entities to have either: (I) a financial interest in the

11 subject matter in controversy or in a party to the proceeding; or (ii) any other kind

12 of interest that could be substantially affected by the outcome of the proceeding.

13 Federal Defendants know no such entities or persons.

14 **20. Such other matters as may facilitate the just, speedy and**

15 **inexpensive disposition of this matter.** Plaintiff refers the Court to item 16

16 above. Federal Defendants know of no such matters.

17 Dated: April 3, 2008

18 Law Office of Rose M. Zoia

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